NO.: 99-9073

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

PAULA L. BUFORD, *PETITIONER,*

VS.

UNITED STATES OF AMERICA, *RESPONDENT.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the "*de novo*" or "deferential" standard of appellate review should be used in determining whether a defendant's prior convictions are "related" within the meaning of the Federal Sentencing Guidelines. The seventh circuit decision shows that prior to *Buford* the 1st, 5th, and 9th circuits reviewed "relatedness" determinations using a *de novo* standard, and six others used a "deferential" standard (2nd, 4th, 6th, 8th, 10th, 11th Cir.). *See U.S. v. Buford* at 201 F.3d 937, 941-942 (7th Cir. 2000). In *Buford* the seventh circuit elected to follow the minority and apply the *de novo* standard, creating a four to six split among the circuits, (Rule 10.a).

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover of the page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows: N/A.

CORPORATE DISCLOSURE STATEMENT (Rule 29.6)

The defendant Buford is an individual who is appealing from her armed bank robbery sentence. She has no parent corporations.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

[X] reported at 201 Fed.3d 937 (2000); or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is not reported

[ ] reported at _____; or,

[ ] has been designated for publication but has not yet been reported; or,

[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided this case was January 12, 2000.

[X] No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C.§1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The sentencing guidelines define a Career Offender at U.S.S.G. §4B1.1:

§4B1.1 Career Offender.

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time of the instant offense, (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. If the offense level for a career criminal from the table below is greater than the offense level otherwise applicable, the offense level from the table below shall apply. A career offender's criminal history category in every case shall be Category VI.

Offense Statutory Maximum		Offense Level
(A)	Life	37
(B)	25 years of more	34
(C)	20 years or more, but less than 25 years	32
(D)	15 years or more, but less than 20 years	29
(E)	10 years or more, but less than 15	24
(F)	5 years or more, but less than 10	17
(G)	More than 1 year, but less than 5 years	12.

§4B1.2(3)(B) requires that "two prior felony convictions" be "counted separately under the provisions of Part A of this Chapter" to count as two prior felony sentences within the meaning of the Career Offender guideline:

§4B1.2 Definitions of Terms Used in Section 4B1.1

...

(3) The term "two prior felony convictions" means ... (B) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). ....

§4A1.2 provides that if cases are "related", then they are counted as but one case. If cases are related, then they are counted as one prior sentence or conviction. This requirement is set forth in **§4A1.2(a)(2)** and **Application Note 3 to §4A1.2**, each of which is set forth below:

§4A1.2(a)(2) is set forth as follows:

§4A1.2 Definitions and Instruction for Computing Criminal History

(a) Prior Sentence Defined

...

(2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of §4A.1.1(a), (b), and (c). ...

...

Application note 3 to §4A1.2 defines "related cases" as follows:

"3. *Related Cases*. Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense. *Otherwise, prior sentences [,] are considered related if they resulted from offenses that (1) occurred on the same occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing*. The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that under-represents the seriousness of the defendant's criminal history and the danger that he presents to the public. For example, if a defendant was convicted on a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as related because the cases were consolidated for sentencing, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which he has committed crimes. In such circumstances, an upward departure may be warranted. Note that the above example refers to serious non-violent offenses. Where prior related sentences result from conviction of crimes of violence, 4A1.1(f) will apply.[1]"

[Emphasis supplied]

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1 4A1.1(f) states: Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.

STATEMENT OF THE CASE

Buford entered a guilty plea to armed robbery, 18 U.S.C. 2113 (a) & (d). A presentence investigation report (PSI) was prepared on January 27, 1999. The PSI detailed Buford's criminal history. It showed that she was convicted and sentenced on four counts of armed robbery in Milwaukee County on May 21, 1992, (case number F-92-0368). The sentences on counts four and five were withheld, and she was placed on 15 years concurrent probation. (PSI page 16, ¶67).

The PSI further showed that Buford was also sentenced in Milwaukee County, on the same date of May 21, 1992, to six years in prison on a case of possession of controlled substance - cocaine, with intent to deliver, case number F-92-0369.

The PSI showed that Buford had a total of 19 criminal history points, and was therefore in criminal history category VI, (PSI page 19, ¶79).

The PSI determined Buford had a total offense level of 22 if she was *not* a Career Offender, (PSI page 9, ¶24). Buford agrees with said determination that her offense level is 22.

The PSI then determined that Buford was a Career Offender pursuant to U.S.S.G. §4B1.1, and therefore her offense level was enhanced to level 31, (PSI pages 9-10, ¶25-28). Buford denies she is a Career Offender.

Buford was over age 18 at the time of the instant offense; her instant offense of armed bank robbery is a crime of violence; and said two prior Milwaukee County convictions were for a crime of violence or a controlled substance case. Buford would be a Career Offender if the two Milwaukee County cases are *not* "related". She would not be a Career Offender if they *were* related, because then she would only have one prior conviction for a crime of violence or a controlled substance offense.

Buford asserted in her trial court objections to the PSI that the two Milwaukee County cases were "related cases", within the meaning of Application Note 3 to U.S.S.G. §4A1.2 Definitions and Instructions for Computing Criminal History. Buford asserted the two Milwaukee County cases could not be counted separately, but had to be counted as one case for purposes of both the Career Offender enhancer and in computing her criminal history points.

The PSI determined that Buford had a criminal history of VI, and an enhanced offense level of 31 as a Career Offender, for a guideline sentencing range of 188-235 months, (see PSI page 31, ¶142).

If the two Milwaukee County cases were "related cases" then only three points could be added for the two of them, thus lowering her criminal history points from 19 to 16. She would still be at criminal history category VI. **Buford** agrees she is still in criminal history VI, but asserts her offense level is 22, for a guideline sentencing range of **84-105 months**.

Buford's principle assertions in her trial court objections to the PSI were that the cases were "related" (pursuant to Application Note 3 of the U.S.S.G. §4A1.2), because the charges against Buford were only separated into two separate case filings because one case was a drug case and Milwaukee County had a separate drug court, and that both cases were consolidated for plea and sentencing. Buford filed the pleadings, plea hearing transcripts, and transcript of the combined sentencing hearing in said Milwaukee County cases as evidence of said consolidation. Said documents are attached to the PSI, and PSI addendums, and are included in the appendix, (A 110-172) **2**.

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2 References to "*(A 110-172)*", etc., are to the *appendix filed with the court of appeals*.

The **trial court** rejected Buford's argument that the cases were "related", agreed with the PSI writer that Buford was at criminal history VI, Career Offender enhanced offense level 31, and guideline range **188-235 months**. The trial court then sentenced Buford to 188 months in prison.

The PSI treated Buford's two 1992 Milwaukee County convictions as separate cases, when in fact they are "related cases" within the meaning of the Sentencing Guidelines. The primary significance of treating them as separate cases was that Buford was incorrectly treated as a Career Offender, and her Offense Level was thereby increased from 22 to 31. She would have been a Criminal History VI regardless of this error. Her Guideline Sentencing Range was therefore increased from 84-105 months, to 188-235 months.

The two cases that the PSI incorrectly treated as separate convictions for purposes of the Career Offender enhancement were the cases where:

1. Buford was charged in Milwaukee County with five counts of armed robbery, case number F-92-0368; (A 110-112) and

2. Buford was charged with one count of possession of controlled substance – cocaine, with intent to deliver, case number F-92-0369, (A 131-132).

CHRONOLOGICAL ANALYSIS OF FACTS

A review of the chronology of the two Milwaukee convictions shows that they were consolidated for plea and for sentencing.

F-92-0368 "ARMED ROBBERY CASE"

03-18-90	Count 1 Date of Offense, (A 111).
05-18-90	Count 2 Date of Offense, (A 111).
12-04-91	Count 3 Date of Offense, (A 112).
12-09-91	Count 4 Date of Offense, (A 112).
01-23-92	Count 5 *Date of Offense*: ***same date as Drug Case***, (A 112).
01-23-92	***Date of Arrest:*** ***same date as Drug Case***, (A 117 & 185).
01-27-92	**Date of Complaint**, ***same date as Drug Case***, (A 112).
02-05-92	Preliminary Hearing: ***waived same date as Drug Case***, (A 118).
02-11-92	Scheduling Conference before Judge Wedemeyer; D.A. Simpson for state. Case set for Jury Trial before Judge Wedemeyer on September 8, 1992, (A 119).
04-07-92	Letter from defense attorney Huppertz confirming that ***Judge Geske agreed "to have the Armed Robbery charges consolidated into her [drug] court for the entry of a plea and sentencing."***, (A 122).
04-20-92	Guilty Plea Hearing before Judge DiMotto. D.A. Steinhafel for D.A. Simpson [3]

3 The docket sheet shows Judge Geske presided, (A 119). The Plea Hearing transcript shows Judge DiMotto presided, (A 123-130). Presumably Judge DiMotto was covering for Judge Geske, as the Huppertz letter (A 122) stated that the case was assigned to Judge Geske for both plea and sentencing.

05-21-92 Sentencing before Judge Geske. ***Same Date as in Drug Case.*** D.A. Simpson for state. As to counts 1 & 2 sentenced to 12 years each count concurrent, less credit for 118 days, (*same credit as Drug Case*). Count 3 dismissed. As to counts 3 & 4: court withheld sentence and placed Buford on probation for 15 years concurrent with each other and concurrent with sentences in counts 1 & 2, (A 149-172).

F-92-0369 "DRUG CASE"

01-23-92 Date of Offense at 3729 West Walnut Street. *Same date as Count 5 of Armed Robbery Case*, (A 131).

01-23-93 Date of Arrest. *Same date as Count 5 of Armed Robbery Case*, (A 135 & 185).

01-27-92 Date of Complaint, **same date as drug case**, (A 132).

02-05-92 Preliminary Hearing. ***Waived same date as Armed Robbery Case***, (A 136).

02-11-92 Scheduling Conference before Judge Geske; D.A. Vinopal appeared for D.A. Stoiber. Case is scheduled before Judge Geske for Final Pretrial on March 20, 1992 and Jury Trial on March 23, 1992, (A 136).

03-20-92 Guilty Plea entered before Judge Geske; D.A. Stoiber for state, (A 139-148).

04-07-93 Letter from defense attorney Huppertz confirming that ***Judge Geske agreed "to have the Armed Robbery charges consolidated into her court for the entry of a plea and sentencing."*** (A 122).

05-21-92 Sentencing by Judge Geske: 6 years *concurrent with sentences imposed in counts 1 & 2 if F-92-0368 (Armed Robbery case) 118 days credit*, (A 149-.172).

The district attorneys are noted for each appearance as the government commented that different district attorneys represented the state in the two cases. No case holds that this is evidence of consolidation.

The cases do comment that one defense attorney for both cases is evidence of consolidation, see *U.S. v. Russell*, 2 F.3d 200, 203 (7th Cir. 1993), citing the facts in *U.S. v. Garcia*, 962 F.2d 479, 483 (5th Cir.), *cert. denied*, ____ U.S. ____, 113 S.Ct. 293, 121 L.Ed.2d 217 (1992). Defense attorney Huppertz or his office represented Buford at all stages of each of the above cases, (A 110-172).

Buford's trial attorney Matthew Huppertz wrote Judge Geske's clerk on April 7, 1992 confirming that she agreed that the robbery case would be "consolidated into her [Judge Geske's] court for the entry of a plea and sentencing", (A 122). The Huppertz letter therefore shows that Judge Geske ordered that the robbery case was to be consolidated with the drug case in her court for both entry of a plea and for sentencing, (A 122).[4] The April 20 transcript of the plea hearing in the armed robbery case shows an agreement to use the same presentence report ordered in the drug case, (4-20-92 transcript: page 3, lines 5-7, A 125). Defense counsel's preliminary remarks, wherein he recites the negotiations, show an agreed date of May 21, 1992 was to be used as the sentencing date for both cases, (4-20-92 transcript: page 3, lines 3-5, A 125). The state then made a record of the fact that the February 17, 1992 Huppertz letter already recited that the two cases were consolidated, i.e. the state adopted the Huppertz letter as being a correct recitation of the matters recited in said letter, (4-20-92 transcript: page 3, lines 15-18, A 125). Buford is then asked by the Court if she agrees with the statements of counsel. Buford did agree with said statements, thereby evidencing

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4 Apparently, as stated above, Judge DiMotto took the April 20, 1992 Plea Hearing in the robbery case to accommodate Judge Geske, as the docket sheet shows Judge Geske presided at the Plea Hearing, (A

her reliance upon same, (4-20-92 transcript: page 3, lines 19-22, A 125). Judge DiMotto then accepted the plea, stated that he approved the negotiations (4-20-92 transcript: page 7, lines 7-9, A 129), and adjourned the case for sentencing before Judge Geske, with "This sentencing to be in conjunction with the sentencing on the other case you have in Judge Geske's Court." (4-20-92 transcript: page 7, lines 11-13, A 129).[5]

At sentencing A.D.A. Stoiber explained that the cases were charged separately only because Milwaukee County had a drug court, (5-21-92 transcript: page 5, lines 10-11; A 153). Apparently nothing regarding Milwaukee County's drug court rules prohibited the cases from being consolidated for plea or sentencing. Thus the cases were only separated for charging due to the organizational quirk of Milwaukee County having a separate drug court, but the cases were then consolidated and treated as one for entry of Buford's guilty pleas and for her sentencing.

Judge Geske found the two cases to be related as she commented that the drug dealing and the armed robberies were all motivated by Buford's drug addiction, (5-21-92 transcript: page 12, lines 3-14; A 160), (which motivation is also evidence of Buford's common scheme or plan in committing the armed robberies and the drug case). Judge Geske sentenced Buford on the armed robbery cases to 12 years on counts 1 and 2, with probation on counts 4 and 5, (5-21-92 transcript: page 19, line 17 – page 20, line 23; A 167). Judge Geske then sentenced Buford to 6 years on the drug case, with said sentence to be consecutive to the 12 year sentences on counts 1 and 2 of the armed robbery case, (5-21-92 transcript: page 20, line 24 – page 21, line 11; A 168).

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119), but the Plea Hearing transcript shows Judge DiMotto presided, (A 123).

5 Note, as stated above, that the armed robbery case had already been assigned to Judge Geske's court, as memorialized by the Huppertz letter, (A 122). Judge DiMotto appears to have been covering for Judge Geske.

The docket sheets in each show she was arrested on January 23, 1992, (A 117 & 135). Each complaint was dated January 27, 1992, (A 112 & 132).

In summary, the Huppertz letter (A 122) shows the robbery case was transferred to Judge Geske for consolidation with the drug case. The armed robbery docket sheet shows that Buford plead guilty (to counts one, two, four and five) in Judge Geske's branch[6] on April 20, 1992; and that Judge Geske sentenced Buford on May 21, 1992, (A 117-121). Said sentence being 12 years concurrent on counts one and two, with 15 years concurrent probation on counts four and five.[7]

The drug case docket sheet shows it was initially assigned to Judge Geske; that Buford plead guilty before Judge Geske on March 20, 1992; and that she was sentenced by Judge Geske on May 21, 1992, (A 135-138). Said sentence being "6 years in prison concurrent with sentences imposed in counts 1 & 2 in F 920368," ***[i.e. concurrent to the robbery case]***.

Buford did plead guilty on two different days, but both pleas were entered in Judge Geske's branch, and ***she was sentenced by Judge Geske in both cases to concurrent sentences on the same day***.

The above chronology shows the two cases were consolidated in Judge Geske's court.

The court of appeals agreed the case could come out either way if a *de novo* standard of review is used, *U.S. v. Buford*, 201 F.3d 937, 940 (7th Cir. 2000).

REASONS FOR GRANTING THE PETITION

The seventh circuit opinion shows there is a six to four split between the circuits regarding the standard of review of the "relatedness" decisions, *Buford, Id.* at 942. The effect on the defendants across the country is easily observed my Buford's enormous increase in sentence under

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6 Transcript of Plea Hearing shows plea was taken by Judge John DiMotto, (A 123). As stated above, he apparently was covering for her branch in Judge Geske's absence.

the Career Offender provision of the Sentencing Guidelines. She would have a sentencing range of 84-105 months without the Career Offender enhancement, but 188-235 months with the Career Offender enhancement, (see PSI page 31, ¶142).

The seventh circuit admitted that elements of Buford's situation support either conclusion that the cases were related, or that they were not related, and that "if our role is to make a *de novo* decision, then this appeal could come out either way", *Buford, Id.* at 940. The *Buford* court then elected to adopt the minority "deferential" standard for the seventh circuit, *Id.* at 942.

Wisconsin provided for a separate drug court, and therefore severed the drug count from the robbery counts. Other states may have similar quirks. The Career Offender designation carries an awesome increase in a federal sentence. The federal courts must use a *de novo* standard of review so that the federal sentences being imposed have uniformity, and are not subject to the variations of the different legislatures and courts of the states.

CONCLUSION

The petition for writ of certiorari should be granted.

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Dated: April 10, 2000

7 Buford's probation was revoked on counts four and five. (See PSI, paragraph 81).

In the
United States Court of Appeals
For the Seventh Circuit

No. 99-1834

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAULA L. BUFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 98-CR-210—**J.P. Stadtmueller**, *Chief Judge.*

ARGUED NOVEMBER 17, 1999—DECIDED JANUARY 12, 2000

Before ESCHBACH, EASTERBROOK, and ROVNER, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* Following her plea of guilty to armed bank robbery, see 18 U.S.C. §2113(a) and (d), Paula Buford was sentenced to 188 months' imprisonment. The judge calculated an offense level of 31 (including all adjustments) after finding that she is a career offender. This led to a sentencing range of 188 to 235 months' imprisonment. If she is not a career offender, then her sentencing range is only 84 to 105 months.

> A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction, (2) the instant offense of conviction is a felony that is either a crime of violence or a con-

> trolled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. §4B1.1. Buford was 42 when she robbed the bank; armed bank robbery is a "crime of violence", see U.S.S.G. §4B1.2(a)(1), even though the object Buford described as a bomb would not have exploded; and she has more than 22 prior convictions. Details of many convictions are missing from the record, because state courts have destroyed relevant documents (most of the crimes are more than a decade old) and Buford has not turned over information in her own possession. But the district judge counted five more-recent convictions that meet the standard of §4B1.1. In 1992 Buford was convicted in a Wisconsin court of four armed robberies and possessing cocaine with intent to deliver it.

Five exceeds two, but this does not end the discussion, because a definitional provision in §4B1.2(c)(2) says that, when counting convictions for purposes of the career offender provision, the judge must determine that "at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c)." Turning back to §4A1.2(a)(2) we find: "Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of §4A1.1(a), (b), and (c)." So when are cases "related"? Application Note 3 to §4A1.2 offers this advice:

> Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). Otherwise, prior sentences are considered related if they resulted from offenses that (A) occurred on the same occasion, (B) were part of a single common scheme or plan, or (C) were consolidated for trial or sentencing.

Buford's four armed robberies and one drug offense did not occur on the same occasion. See *United States v. Hudspeth*, 42 F.3d 1015 (7th Cir. 1994) (en banc) (defining "occasion" for purposes of 18 U.S.C. §924(e)(1), the Armed Career Criminal statute). Nor were they part of a common scheme or plan. The district court sensibly rejected Buford's argument that all crimes designed to raise revenue are related by that objective, which would treat a one-woman crime wave as having but a single countable offense and thus negate the principal function of the career offender guideline. Buford therefore relies on (C), asserting that the cases were consolidated for sentencing. As is frequently true, the details are messy and defy easy characterization—and the Sentencing Commission has not offered guidance on intermediate situations.

Buford was arrested in Milwaukee on January 23, 1992, after robbing a gas station at gunpoint. A search of her residence turned up a pistol, the loot, and 73 grams of cocaine. Buford confessed to three additional armed robberies of gas stations during 1990 and 1991. On January 27, 1992, state prosecutors filed two criminal complaints against Buford. The first charged her with committing five armed robberies. The second charged the drug offense and was assigned to a branch of the circuit court designated to handle drug prosecutions. Wis. Stat. §753.061(2). The cases were handled by different prosecutors and assigned to different judges. Buford pleaded guilty to four of the robberies and to the drug charge in separate hearings before the different judges. Sentencing in both prosecutions occurred on May 21, 1992, before the judge who had been assigned to the drug case. The record does not include an order of consolidation, though it does contain a letter from Buford's lawyer consenting to the procedure. The judge then imposed three sentences: 6 years for the drug offense; 12 years for two of the robberies; and 15 years for the other two robberies. These sentences ran concurrently. Two judgments (one for the robbery counts and one for the drug count) were entered. Wisconsin did

not follow a truth-in-sentencing approach back in 1992; the 15-year sentence was "withheld" (a form of probation), and the 12-year term of imprisonment ended in less than 6 years, allowing Buford to rob a bank in 1998. Her federal 188-month sentence, which amounts to 15 years and 8 months, will keep her in prison for much longer than her state "15-year" sentence. (Wisconsin adopted a true-sentence approach effective January 1, 2000, too late for Buford.)

Everyone agrees that the four armed robberies were consolidated with each other for trial and sentencing and thus count as but a single crime of violence for purposes of §4B1.1. Buford contends that the imposition of sentence by a single judge on a single occasion was a consolidation of the drug offense with the armed robberies for sentencing, within the meaning of Application Note 3. The federal prosecutor replies that there was no *consolidation*: there is no order of consolidation, and separate judgments were entered following the sentencing. We have held that joint sentencing for administrative convenience is not "consolidation for sentencing" under Application Note 3. *United States v. Bomski*, 125 F.3d 1115, 1119 (7th Cir. 1997); *United States v. Stalbaum*, 63 F.3d 537, 539 (7th Cir. 1995); *United States v. Russell*, 2 F.3d 200, 204 (7th Cir. 1993). But we have also held that a formal order of consolidation is unnecessary, and that cases may be deemed functionally consolidated when they are factually or logically related, and sentencing was joint. *United States v. Joseph*, 50 F.3d 401 (7th Cir. 1995). Here a single sentencing hearing, informed by a single presentence report, ended in concurrent sentences. Buford contends that her crimes were related through her addiction and would have been charged in a single indictment or information but for Wisconsin's decision to require drug prosecutions to be handled separately. This is not so clear; Wisconsin follows the approach of Fed. R. Crim. P. 8(a), see Wis. Stat. §971.12(1), and it might be hard to characterize the robberies and drug offense as "of the same or similar character or . . . based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Anyway, the separate drug court cuts both ways: the crimes *might* have been consolidated but for their assignment to separate branches, but the separation shows that Wisconsin does not want such prosecutions consolidated—and Application Note 3 defers to the state's practice on consolidation rather than creating an independent federal rule. (Wisconsin's provision for separation is not airtight; the branches designated under §753.061(2) are to handle drug cases "primarily" but not exclusively, which is why a single judge was able to sentence Buford for both the robberies and the drug offense. But the statute assuredly disfavors consolidation.)

Because elements of Buford's situation support either characterization, the standard of appellate review may be dispositive. If review is deferential, then affirmance follows straightaway, for the district court's conclusion that Buford's state cases were not functionally consolidated for sentencing cannot be called clearly erroneous. But if our role is to make a *de novo* decision, then this appeal could come out either way. What, then, is the right appellate posture? Until recently the court has treated this as an unresolved question. See *United States v. Carroll*, 110 F.3d 457, 460 (7th Cir. 1997); *United States v. Woods*, 976 F.2d 1096, 1099 (7th Cir. 1992); *United States v. Connor*, 950 F.2d 1267, 1270 (7th Cir. 1991); *Joseph*, 50 F.3d at 404; *Russell*, 2 F.3d at 204. Within the last few months two panels have taken a firm stance—but unfortunately the panels do not agree with each other, and the more recent panel did not acknowledge the prior, contrary decision. Compare *United States v. Joy*, 192 F.3d 761, 770 (7th Cir. 1999) (relatedness is a factual issue reviewed only for clear error), with *United States v. Jackson*, 189 F.3d 655, 658 (7th Cir. 1999) (all questions about application of the career offender guideline are reviewed *de novo*). Neither *Joy* nor *Jackson* gives a reason for its

conclusion or evinces awareness that the issue had been reserved by earlier panels. Divergence within the circuit mirrors a conflict among the circuits. Six review "relatedness" issues deferentially, while three engage in *de novo* decisionmaking. See *United States v. Correa*, 114 F.3d 314, 317 (1st Cir. 1997) (*de novo*); *United States v. Mapp*, 170 F.3d 328, 338 (2d Cir. 1999) (deferential); *United States v. Huggins*, 191 F.3d 532, 539 (4th Cir. 1999) (deferential); *United States v. Huskey*, 137 F.3d 283, 285 (5th Cir. 1998) (*de novo*); *United States v. Irons*, 1999 U.S. App. LEXIS 26887 at *9-10 (6th Cir. 1999) (deferential); *United States v. Bartolotta*, 153 F.3d 875, 879 (8th Cir. 1998) (deferential); *United States v. Allen*, 153 F.3d 1037, 1045 (9th Cir. 1998) (*de novo*); *United States v. Wiseman*, 172 F.3d 1196, 1219 (10th Cir. 1999) (deferential); *United States v. Mullens*, 65 F.3d 1560, 1565 (11th Cir. 1995) (deferential). By revisiting the subject, we can create at least intra-circuit harmony.

"Relatedness" and "consolidation" are not pure questions of law. No legal rule specifies what it means for cases to be "consolidated for sentencing." If in *Joseph* we had adopted the view that "consolidation" is a matter of form—cases are consolidated if there is an order of consolidation, otherwise not—then it would make sense to engage in *de novo* consideration. A record either contains an order of consolidation or it doesn't, which dictates a legal outcome—though if the existence of the order were debatable, the district judge's resolution of that wholly factual issue would be reviewed deferentially. But once *Joseph* adopted a functional approach to consolidation, it became impossible to say that one characterization rather than another is mandatory. We have instead a classic mixed issue, where the court must apply legal norms to classify the facts. And disputes about the proper characterization of events, when legal norms guide rather than determine the answer, are principally committed to district courts, with deferential appellate review. Thus even though a finding of racial discrimination requires the application of law to facts, the existence of discrimination is itself a "fact" and review is for clear error only. *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). Whether an employee is a "seaman" under a multi-factor balancing approach likewise is a question of fact, with deferential appellate review. *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986). Even the question whether a complaint is "frivolous" for purposes of Fed. R. Civ. P. 11—a subject that requires no fact-finding by the district court—is reviewed deferentially. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401-05 (1990).

Cooter & Gell holds that when the legal inquiry resists statement as a rule of general applicability, and when the application of that rule is a case-specific determination, courts of appeals should treat the district judges' conclusions deferentially. Our own cases likewise emphasize that matters of characterization and application, which lack general significance to other litigants, are best resolved by the district court, with a light appellate touch. See, e.g., *Mars Steel Corp. v. Continental Bank N.A.*, 880 F.2d 928 (7th Cir. 1989) (en banc); *Morton Community Unit School District No. 709 v. J.M.*, 152 F.3d 583 (7th Cir. 1998); *Mucha v. King*, 792 F.2d 602, 604-06 (7th Cir. 1986); *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1428-29 (7th Cir. 1985). As the second circuit put the point in *Mapp*, 170 F.3d at 338 n.15, deferential review is appropriate "[b]ecause of the (obviously) fact-intensive nature of the inquiry and because a sentencing court's findings regarding factual relatedness in any given case are unlikely to establish widely-applicable principles of law". (None of the three circuits that has gone the other way has offered a reasoned explanation for the choice, and the fifth circuit in *United States v. Garcia*, 962 F.2d 479, 481 (5th Cir. 1992), explained that although the argument for deferential review is "compelling," the circuit would continue to use *de novo* review because of unexplained prior decisions.)

How best to understand the events in the Wisconsin courts in spring 1992 has no significance beyond these

parties. Someone has to select a characterization of complex facts, and the best candidate for that role is the district judge. Questions concerning application of the Guidelines generally are reviewed deferentially, see *Koon v. United States*, 518 U.S. 81, 96-100 (1996), unless the district court makes an identifiable legal mistake; that principle is as applicable to "relatedness" as it was to the questions under review in *Koon*. We hold accordingly that whether cases have been "consolidated" for trial or sentencing is a matter of fact, to be reviewed deferentially by the court of appeals. Other issues in the application of the career-criminal guideline may be strictly matters of law with general application, and for those issues review would be plenary. Because this conclusion resolves a conflict among panels of this court, it was circulated to all active judges under Circuit Rule 40(e). None of the judges favored a hearing en banc.

The district judge did not commit a clear error in finding that the joint sentencing was a matter of administrative convenience rather than a "consolidation for sentencing." Separate sentences were imposed and separate judgments entered. Treating Buford as a career offender makes a good deal of sense; her lengthy record demonstrates that she is an incorrigible criminal who regularly uses weapons (or, in her latest robbery, the threat of a bomb). With a record of convictions past two dozen, she is a "career" offender.

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

USCA-97-C-006—Midwest Law Printing Co., Inc., Chicago—1-12-00

THE COURT: All right. Mr. Kagen, do you take issue with Mr. Robles' comment?

MR. ROBLES: I do have a copy of the show-up.

MR. KAGEN: To speed things up, I was not her counsel back then. I just asked her because I wouldn't have any way of knowing if the factual statement Mr. Robles made was correct. My client does acknowledge that it was correct.

THE COURT: All right. In the vernacular, to cut to the chase here, I think the only factual issue that drives whether or not these cases were consolidated or not is the extent to which a record was made or perhaps, better stated, was not made before the Milwaukee County Circuit Court on the day of sentencing. It is quite obvious that the guilty pleas that were entered in these two cases numbered 368 and 369 were done on separate days before separate judges, and we only get to the matter of consolidation in terms of Judge Geske imposing sentence on May 21st of 1992. And relating those salient facts, it is clear that there was no agreement between the state and Ms. Buford and her counsel with regard to the consolidation of these cases, either for purposes of charging or for purposes of disposition. And, clearly, there was no agreement, beyond counsel now arguing by inference that there was a consolidation, that, in fact, consolidation was an integral part of the sentencing proceeding on May 21st of 1992.

And so to the extent that either the government or you, Mr.

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Kagen, have any additional argument you want to make, the court is simply left to draw from the record that was made before the Milwaukee County Circuit Court in May of 1992 as to whether or not these two cases were in fact consolidated, as that term is used in the context of the federal sentencing guidelines. One of the things that federal judges are not about to get involved in is revisionist history with respect to what may or may not have occurred before another court on another day in another jurisdiction. And so I am simply left to apply as best I can the provisions of the sentencing guidelines together with the applicable application notes to the relevant facts here, but to the extent that there is an inference of consolidation, I am left to conclude that the only inference of consolidation is the fact that sentences were imposed in two different cases on the same date before the same judge, with no formal consolidation order. And when I say formal, I'm referring to something of record, either before a court reporter or a written document.

And, of course, the other fact that tends to undermine your current suggestion that these cases were in fact consolidated was the fact that two different assistant district attorneys appeared at the sentencing hearing with respect to each of their respective cases. And while that in the final analysis certainly is not controlling, it certainly goes a long way to suggest that, for many reasons that are left to the executive

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branch of government, including state government, the matter of whether or not cases ought to be consolidated or charges read in or diverted is left to the discretion of the prosecutor. But I'm certainly willing to give you an opportunity to argue as you have in written form, Mr. Kagen, that your client does not meet the federal test for considering these offenses and sentences separately in light of the federal sentencing guidelines that she now is confronted with.

MR. KAGEN: I assume you don't want me to repeat what I've had filed here. I tried to get all the records I could, the transcripts from the state proceedings. And, again, I stand by what I filed. I think the Seventh Circuit's cases fall apart on scrutiny, simple scrutiny, and I think that the Ninth Circuit cases are quite clear that there is a trend towards considering functional consolidation. And as I said earlier, even today, there was tremendous angst in the Seventh Circuit about the effect of this, but there were some recent amendments that I've set forth in the written documents showing that there appears to be a compelling change in the application notes and that the safety valve is to upwardly depart. So, again, I don't want to rehash everything I've filed. Obviously the court's studied it carefully.

THE COURT: Well, I guess by way of response, Mr. Kagen, I don't know which particular cases you have in mind that lead you to conclude that the Seventh Circuit somehow is

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changing its attitude or policy in these situations to allow your client to have these two sentences considered consolidated. I may be missing something here, but based on the record that has been made factually, I don't even think this is a close case, to be quite candid. Now, if you've got something to suggest or if I have misread some of your submittal, I'll be happy to take the time to walk through it again this morning, but I'm reading in considerable detail, particularly the March 26th, the second addenda, in which you come back and challenge the probation department.

I'm interested in knowing what further rejoinder you have to the probation officer's response addressed on page four and five of the addenda, because I think Ms. Morgan has laid it out pretty cold, not to be trite, that these cases were not consolidated and ought not be considered by this court as consolidated for purposes of applying the otherwise applicable sentencing guidelines that drive the career offender status that is at bottom in this sentencing proceeding.

MR. KAGEN: My March 19th response did address the Stalbaum case, and I thought the government had taken that out of context. I think also, looking at what was cited by way of Wisconsin cases in Stalbaum, we see that they go back to 1800 statutes that really have no application here. And, again, I've set that forth in my submissions. I just don't think that the Seventh Circuit cases are well grounded in current law. I

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think, as a practical sense, what's happening is the functional consolidation issue that the Ninth Circuit is following and --

THE COURT: Well, regrettably the Ninth Circuit is not the Seventh Circuit, and when you go to the Ninth Circuit, regrettably, there is very little in the way of legal propositions that along the way you can't find some authority for and, as a consequence, in the view of this humble judge, there's not an awful lot of solace in particular cases from the Ninth Circuit because they're literally all over the map. And, more importantly, when the Seventh Circuit has spoken on the issue, there's no reason to go to another circuit with respect to the court's analysis.

And it may well be that this unique set of facts -- although I don't think they're very unique in the final analysis -- may cause my colleagues on the Seventh Circuit to take another view of all of this. And while I may be tipping my hand a bit here, I am unpersuaded on the state of the record that has been made, looking at all of the facts that are recited chapter and verse, both in the original presentence and then addressed twice over in these two addenda, that leads this court to conclude that, insofar as the operation of the federal sentencing guidelines, that these two state court cases were consolidated. Drugs and bank robberies may on occasion have common ground but in this instance they clearly did not.

And, again, this court is without any record to suggest

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that the two prosecutors, Mr. Simpson and Mr. Stoiber, in the district attorney's office didn't have separate interests here. There were separate victims in the bank robberies. The drugs were, other than the temporal relationship, unrelated. It wasn't as if she was charged with possession of drugs and robbery of someone to have obtained the drugs that she was charged with possessing. And it's a matter of having made or not having made an appropriate record. And all we, as federal judges, can do is put full faith and credit in the judgments and convictions that underlie and drive the defendant's criminal history score and apply the guidelines as best we can. But from the record that was made here, I am unwilling and unable, applying the relevant guidelines and the relevant case authority, to agree with Ms. Buford's position that these cases were consolidated and, therefore, the career offender provisions not be triggered and then somehow come back and depart from the guidelines in another fashion. I don't find on the record that that is at all appropriate.

And, fortunately, in this case, unlike several others that this court has recently had experience with, at least the government had the presence of mind to draw to Ms. Buford's attention before she pled guilty to this bank robbery that it was their view that she did qualify for career criminal offender status. So we are not dealing with a situation, as I have recently had to deal with others in your office, Mr.

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Robles, where it appeared to the court that not only was the defendant and his attorney not aware of the implications of the career offender provisions but the assistant U.S. attorney, regrettably, never said anything. And I think it may have been because she was, although aware of career criminal offender, was not aware of the profound implications under the sentencing guidelines. So at least we don't have that debacle to confront with in Ms. Buford's case.

So to the extent that the facts are presented here, I am constrained to conclude that the two cases that I referenced earlier, that is, F-920368 and F-920369, were not consolidated as related cases for U.S. Sentencing Guideline purposes.

Are there any other factual matters, Mr. Kagen, that you or your client wish to have the court address?

MR. KAGEN: Nothing other than what was in the submissions, no, Judge.

THE COURT: Thank you.

Mr. Robles, Mr. Larsen, do either of you have any objection as to any of the facts presented by Ms. Morgan in her presentence and the addenda?

MR. ROBLES: No, I do not.

THE COURT: That being the case, the court first adopts all of the facts that have been presented in the presentence report, concluding, as I have already put on the record, that the facts presented do not disclose a

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consolidation of the two -- of the underlying circuit court cases that would preclude the court applying the career offender provisions of the sentencing guidelines to Ms. Buford's criminal history score, triggering an enhancement in her offense level. And I will rely on those facts first in determining the ultimate sentencing guidelines that apply here, together with the ultimate sentence of the court.

Now, in recognition of the court's findings as to the facts, the probation department recommends the following guidelines as being applicable in this case. They include a total offense level of 31, a criminal history score of Roman numeral VI, a guideline term of imprisonment of 188 to 235 months, followed by at least three but not more than five years of supervised release, a fine of not less than $15,000, nor no more than $150,000, and, finally, a $100 special assessment.

Having made those findings and knowing how the court addressed the matter of the consolidation issue on the two state court cases, Mr. Kagen, do you and your client otherwise accept the guidelines as the probation department has recommended them?

MR. KAGEN: Yes.

THE COURT: Thank you.

Mr. Robles, do you and Mr. Larsen similarly accept the sentencing guidelines as recommended by the probation department?

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MR. ROBLES: Yes, we do, subject to our recommendation which is made in the plea agreement that I'll expound on.

THE COURT: All right. Thank you. That being the case and the court having no independent basis to take exception to or otherwise disagree with the guidelines as recommended, given my ruling on the underlying facts with regard to the relatedness issue of these two circuit court cases, I do herewith adopt each of the sentencing guidelines as recommended. Again, they include a total offense level of 31, a criminal history score of Roman numeral V -- or VI, a guideline term of imprisonment of 188 to 235 months, followed by at least three but not more than five years of supervised release, a fine of not less than $15,000, nor no more than $150,000, finally, a $100 special assessment.

Having made those findings, Mr. Kagen, do you know of any reason why the court ought not proceed this morning with the imposition of sentence in your client's case; and, if not, is there any statement that you or Ms. Buford would like to make in mitigation?

MR. KAGEN: We have no objection to the proceedings continuing and being completed today.

THE COURT: All right. And knowing that, is there any statement that you would like to make to the court and does your client wish to address the court?

MR. KAGEN: Yes.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

PAULA LOUISE BUFORD
a/k/a "Paula L. Bufford"

JUDGMENT IN A CRIMINAL CASE

Case Number: 98-CR-210-001

Robert A. Kagen
Defendant's Attorney

David Robles
Special Assistant United States Attorney

U.S. DIST. COURT EAST DIST. WISC.
FILED
APR 2 1999
AT ___ O'CLOCK ___ M
SOFRON B. NEDILSKY

THE DEFENDANT:

pleaded guilty to Count One of the indictment.

Title & Section	Nature of Offense	Date Concluded	Count(s)
18 U.S.C. § 2113(a) & (d)	Armed Bank Robbery	3/18/98	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Date Sentence Imposed:
April 2, 1999

J. P. Stadtmueller
Chief Judge

Defendant's Soc. Sec. No.: 336-48-7337

Defendant's Date of Birth: 8/10/55

Defendant's USM No.: 05422-089

Defendant's Legal Address:
9510 West Fond du Lac Avenue
Apartment 22
Milwaukee, WI 53225

April 2, 1999
Date Judgment Signed

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Defendant: Paula L. Bu...d
Case Numbers: 98-CR-210

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of one hundred eighty-eight (188) months as to Count One of the indictment.

The defendant is remanded to the custody of the United States Marshal.

The court makes the following recommendation to the Bureau of Prisons:

(1) that the defendant be evaluated for her participation in a drug treatment and counseling program; and

(2) that the defendant be incarcerated at FCI – Pekin, IL.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy U. S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a total term of five (5) years as to Count One of the indictment.

The defendant shall not commit another federal, state, or local crime and shall comply with the following special conditions:

1. The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. The defendant shall not possess a firearm as defined in 18 U.S.C. § 921 or any other dangerous weapon.

3. Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, the defendant shall not illegally possess any controlled substance. Such possession will result in revocation of the supervised release term and the defendant will be obligated to serve a further term in prison.

4. The defendant shall participate in a program of testing and residential or outpatient treatment for drug and alcohol abuse, as directed by her supervising probation officer, until such time as the defendant is released from such program. The defendant is to refrain from the use of all alcoholic beverages throughout the period of her supervised release term.

5. After release from imprisonment, the defendant is to reside for the first 90 days in a community correctional center upon the first available vacancy. The defendant is to obey the rules of that facility.

6. The defendant shall participate in a mental health treatment program and shall take any and all prescribed medications as directed by the treatment provider and participate in any psychological/psychiatric evaluation and counseling as may be directed by her supervising probation officer.

7. The defendant shall pay any balance of the restitution at a rate of no less than $50.00 per month.

8. The defendant is to provide access to all of the financial information required by her supervising probation officer.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or his or her supervising probation officer.

2. The defendant shall report to his or her supervising probation officer and shall submit a truthful and complete written report within the first five days of each month.

3. The defendant shall answer truthfully all inquiries by his or her supervising probation officer and follow the instructions of his or her supervising probation officer.

4. The defendant shall support his or her dependents and meet other family responsibilities.

5. The defendant shall work regularly at a lawful occupation unless excused by his or her supervising probation officer for schooling, training, or other acceptable reasons.

6. The defendant shall notify his or her supervising probation officer ten days prior to any change in residence or employment.

7. The defendant shall refrain from excessive use of alcohol.

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by his or her supervising probation officer.

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of his or her supervising probation officer.

11. The defendant shall notify his or her supervising probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13. As directed by his or her supervising probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit his or her supervising probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5 Part B.

	Assessment	Fine	Restitution
Totals:	$100.00	$0	$2,615.00

FINE

Based on the defendant's limited finances the court determines that the defendant does not have the financial ability to pay a fine, costs of incarceration, costs of community confinement or supervision and therefore waives the fine, costs of incarceration, costs of community confinement and cost of supervision in this case.

A waiver of the cost of community confinement does not preclude the Bureau of Prisons from imposing a subsistence fee of up to 25 percent of gross income, based on ability to pay, for any portion of the sentence spent in a community correctional facility.

RESTITUTION

The defendant shall pay restitution to the following payee in the amount listed below. The court waives interest on the restitution.

Name of Payee	**Total Amount of Loss	Restitution Ordered
State Financial Bank ATTN: Ron Knaus Assistant Vice President 2650 North Downer Avenue Milwaukee, WI 53211	$2,615.00	$2,615.00
Totals:	$2,615.00	$2,615.00

** Findings for the total amount of losses are required under Title 18 of the United States Code, Chapters 109A, 110, 110A and 113A

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution.

Special instructions regarding the payment of criminal monetary penalties:

The $100.00 special assessment is due and payable immediately to the Clerk of Court's office, Room 362, U.S. Courthouse.

The court considers the defendant's participation in the Federal Bureau of Prisons Inmate Financial Responsibility Program a necessary part of the repayment of the court-imposed financial obligations. Payments are to apply first to the special assessment and then to the restitution until paid in full.

During any period of supervised release, the defendant shall pay any balance of the restitution at a rate of no less than $50.00 per month.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All Criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are to be made as directed by the court, his or her supervising probation officer, or the United States Attorney.

Defendant: Paula L. Buford
Case Numbers: 98-CR-210

STATEMENT OF REASONS

The court adopts the factual findings and guideline application contained in the 1/27/99 presentence report as updated and modified by the 2/23/99 and 3/26/99 addenda to that report. Furthermore, the court determines that the Milwaukee County Court did not consolidate the defendant's cases (numbers F-920368 and F-920369) for purposes of the 5/21/92 sentencing and that therefore they constitute two separate offenses.

Guideline Range Determined by the Court:

Total Offense Level: 31

Criminal History Category: VI

Imprisonment Range: 188 to 235 months

Supervised Release Range: 3 to 5 years

Fine Range: $15,000.00 to $150,000.00 (with costs of imprisonment/ supervision)

Fine waived because of inability to pay.

Restitution: $2,615.00

$100.00 special assessment

This sentence is within the guidelines range, that range exceeds 24 months, and the sentence is imposed for the following reason:

(1) because of the seriousness and risk of harm of the defendant's offense in combination with her prodigious criminal history.

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